BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

IDA STEIN dba DON'S JEWELERS
(Employer-Appellant)

PRECEDENT
RULING DECISION
No. P-R-363
Case No. R-77-26

Employer Account No.

Claimant: Jesse Adler
S.S.A. No.
BYB: 10246 SD: 01206

Office of Appeals No. NH-R-8189

The employer appealed from the decision of the Administrative Law Judge which held the employer was not entitled to a determination or ruling and declining to consider the employer's appeal from a decision allowing benefits to a claimant in the matter of the claim for benefits of Jesse Adler, Los Angeles Office of Appeals Case No. S-39748, which was rendered September 1, 1976.

STATEMENT OF FACTS

The claimant left work with the above employer on or about January 24, 1976. He thereafter moved to Miami, Florida, and established a claim for benefits through the interstate processes which was made effective February 1, 1976. In establishing his claim for benefits, the claimant utilized the standard interstate form and at that time indicated as reason for termination, "discharged." A supplemental statement was enclosed with such form and directed to the interstate unit of the California department. Upon receipt of such documents, a standard first claim for benefits form was prepared by the interstate unit. This form was directed to the employer under a mailing date of February 29, 1976, and no response was received from the employer. Prior to the issuance of the determination, a telephone conversation was held with the employer and a statement from the employer was obtained. It would appear that, as a result of such conversation, it was initially determined that the claimant had left work voluntarily for

personal reasons. It would also appear that the employer was orally informed of such conclusion. From Department records, however, this conversation was not held until March 31, 1976.

Thereafter, on April 8, 1976, a determination was issued to the claimant holding him to be disqualified from benefits for an indeterminate period upon a finding that the claimant had left work voluntarily without good cause. The claimant appealed from such determination on April 13, 1976, and as a result of a hearing which was held on August 10, 1976, a decision was issued reversing the determination of the Department. Inasmuch as the employer had failed to respond to the initial notice of claim filed, no ruling or notice of determination was issued to the employer; neither was the employer advised of the claimant's appeal or the results of the ensuing decision.

Effective October 24, 1976, the claimant established a Federal State Extended Duration Claim. Again, the claimant indicated a discharge was the reason for separation, and notice of such further claim was directed to the employer under the date of November 29, 1976. The employer protested the claim in a timely manner, setting forth a complete resume of the circumstances leading up to the termination. The Department issued a notice denying the employer a ruling or determination upon the finding that the employer had failed to respond to the first notice of claim filed in February 1976.

During the proceedings below, it was contended that, although the initial notice had been received, it was not deemed necessary to respond since the employer concurred in the "alleged" reason for separation (voluntary quit, personal reasons which were found by the Department). It was also asserted that information had been given to the Department over the telephone and that the employer had thus satisfied its statutory responsibility.

Following the hearing below, a decision was issued affirming the Department's Notice of Denial of a Ruling and denying the employer's right to question the validity of that decision which was rendered September 1, 1976.

REASONS FOR DECISION

The instant proceedings arise through a timely response by the employer to a notice of the filing of a federal extended duration claim (sections 4001 et seq., California Unemployment Insurance Code).

The requirement of giving notice and the right of the employer to respond are set forth by sections 4654 and 4655, which provide as follows:

> "The Department of Employment Development shall give a notice of the filing of an application or an additional claim to the employing unit by which the individual was last employed immediately preceding the filing of such application or claim. The employing unit so notified shall submit within 10 days after the mailing of such notice any facts then known which may affect the individual's eligibility for federal-state extended benefits. The 10-day period may be extended for good cause. If after such 10-day period the employing unit acquires knowledge of facts which may affect the eligibility of the individual and such facts could not reasonably have been known within the period, the employing unit shall within 10 days of acquiring such knowledge submit such facts to the Department of Employment Development.
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> "The Employment Development Department shall consider the facts submitted by an employer pursuant to Section 4654 and make a determination as to the individual's eligibility for federal-state extended benefits. The Employment Development Department shall promptly notify the individual and any employer who prior to the determination has submitted any facts pursuant to Section 4654 of the determination and the reasons therefor. The individual and any such employer may appeal therefrom to a referee within 20 days from mailing or personal service of notice of the determination. The 20-day period may be extended for good cause. The Director of Employment Development shall be an interested party to any appeal.
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> "'Good cause,' as used in this section, shall include, but not be limited to, mistake, inadvertence, surprise, or excusable neglect."

The contentions of the employer may be set forth separately and distinctly, as follows:

> (1) That having submitted sufficient facts concerning the separation prior to the issuance of a determination the employer was entitled to a copy of the determination and a ruling.
>
> (2) Any employer whose reserve account may be subjected to benefit charges is entitled to notice of any appeal respecting that claimant's entitlement to benefits and a copy of the decision resulting from such appeal.

It is to be noted that sections 4654 and 4655 are in effect a reiteration of sections 1327 and 1328 of the code. For the reasons set forth hereafter we find the contentions of the employer to be without merit, and consequently must concur in the conclusions reached in the proceedings below that the employer is not entitled to either a determination or ruling. We further find the administrative law judge properly declined jurisdiction under that decision rendered September 1, 1976. We base our conclusions upon the following pertinent sections of the Unemployment Insurance Code which are set out at length:

> "1327. The Department of Employment Development shall give a notice of the filing of a new or additional claim to the employing unit by which the claimant was last employed immediately preceding the filing of such claim. The employing unit so notified shall submit within 10 days after the mailing of such notice any facts then known which may affect the claimant's eligibility for benefits."
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> "1328. The Employment Development Department shall consider the facts submitted by an employer pursuant to Section 1327 and make a determination as to the claimant's eligibility for benefits. The Employment Development Department shall promptly notify the claimant and any employer who prior to the determination has submitted any facts or given any notice pursuant to Section 1327 and authorized regulations of the determination and the reasons therefor. The claimant and any such employer may appeal therefrom to a

referee within 20 days from mailing or personal service of notice of the determination. The 20-day period may be extended for good cause. The Director of Employment Development shall be an interested party to any appeal.

"'Good cause,' as used in this section, shall include, but not be limited to, mistake, inadvertence, surprise, or excusable neglect."

"1333. Notices, protests, and information required under this article shall be submitted in accordance with authorized regulations."

Pursuant to the authority set forth by section 1333, the following material regulations were promulgated by the Department and set forth in Title 22, California Administrative Code. Insofar as relevant such regulations read:

"1327-1. Facts Respecting Claimant's Eligibility Required From Last Employing Unit of Claimant. (a) An employing unit by which a claimant was last employed immediately preceding the filing of a new or additional claim and who is given notice of the filing of such claim as prescribed by Section 1327 of the code shall, within 10 days after the mailing of such notice as prescribed by Section 1327 of the code, submit to the department at the local office in which the claim was filed any facts then known which may affect the claimant's eligibility for benefits.

(b) The last employing unit of a claimant shall also submit facts as required by Section 1333-1 of these regulations.

(c) The submission by the last employing unit of facts to the department under this section shall comply with Section 1333-2 of these regulations.

(d) The 10-day period prescribed by Section 1327 of the code within which the last employing unit shall submit facts may be extended in accordance with Section 1333-3 of these regulations."

"1328-1. Notices of Determination to Employing Units From Department Respecting Claimant's Eligibility. (a) Any employing unit which furnishes the department with facts in accordance with Sections 1327 and 1331 of the code and Sections 1327-1 and 1331-1 of these regulations and which has been notified by the department of the determination made after considering such facts shall be notified by the department of any modification in such determination made by the department, either on its own initiative or pursuant to any additional facts which come to the attention of the department.

(b) The employing unit may appeal from the modified determination in the manner prescribed in Section 1328 of the code."

"1333-2. Requirements for Submitting Facts by Employing Units Respecting Claimants' Eligibility for Benefits. Each submission of facts to the department by an employing unit under Sections 1327-1, 1331-1, and 1333-1 of these regulations shall relate to a single claimant and shall include the following:

(a) The name, address, and employer account number of the employing unit.

(b) The claimant's full name.

(c) The claimant's Social Security account number.

(d) The date the claim was filed (if available).

(e) Specific facts reasonably applicable to the claimant's eligibility for benefits."

"1333-3. Protests and Information Submitted by Claimants and Employers to Department: Extension of Time for Good Cause. The department may for good cause grant additional time in which to comply with the requirements of Section 1327 of the code and Sections 1330-1, 1331-1, and 1333-1 of these regulations. Any protest or information submitted to the department after expiration of the time limits set forth in the applicable

section or sections shall include a statement of the reasons why the delay should be considered to be with 'good cause,' and if it fails to do so the claimant or employer shall be required to submit promptly a statement of the reasons why the delay should be considered to be with 'good cause.'"

The above provisions of the code and regulations relate to a claim for benefits and an employer's rights to a determination.

Rulings are similarly specifically provided for and section 1030 of the code reads:

"(a) Any employer who is entitled under Section 1327 to receive notice of the filing of a new or additional claim may, within 10 days after mailing of such notice, submit to the Employment Development Department any facts within its possession disclosing whether the claimant left such employer's employ voluntarily and without good cause or was discharged from such employment for misconduct connected with his work, or whether the claimant was a student employed on a temporary basis and whose employment began within, and ended with his leaving to return to school at the close of, his vacation period. The period during which the employer may submit such facts may be extended by the Director of Employment Development for good cause.

* * *

"(c) The Employment Development Department shall consider such facts together with any information in its possession and promptly notify the employer of its ruling as to the cause of the termination of the claimant's employment. Any ruling may for good cause be reconsidered by the department within 15 days after mailing or personal service of the notice of ruling, except that any ruling which relates to a determination which is reconsidered pursuant to subdivision (a) of Section 1332 may also be reconsidered by the Employment Development Department within the time provided for reconsideration of such determination.

For purposes of this section only, if the claimant voluntarily leaves such employer's employ without notification to the employer of the reasons therefor, and if the employer submits all of the facts within its possession concerning such leaving within the applicable time period referred to in this section, such leaving shall be presumed to be without good cause. An individual whose employment is terminated under the compulsory retirement provisions of a collective bargaining agreement to which the employer is a party shall not be deemed to have voluntarily left his employment without good cause. An appeal may be taken from a ruling or reconsidered ruling in the manner prescribed in Section 1328. The Director of Employment Development shall be an interested party to any appeal."

The regulations are contained in section 1030-1:

"(a) Any employer who is entitled under Section 1327 of the code to receive notice of the filing of a new or additional claim may, within 10 days after mailing of such notice, submit to the department any facts within its possession disclosing whether the claimant left such employer's employ voluntarily and without good cause or was discharged from such employment for misconduct connected with his work, and request a ruling pursuant to Sections 1030, 1031 and 1032 of the code.

* * *

"(c) Every such request for ruling shall relate to a single claimant and shall be filed with the local office in which such claim was filed and shall contain the following:

(1) Employer's name;
(2) Employer's address;
(3) Employer's account number;
(4) Name of claimant;
(5) Claimant's social security account number;
(6) Date claim was filed;
(7) Date of separation;

(8) Facts relating to the reason for or circumstances resulting in the claimant's separation where it is alleged that he voluntarily quit without good cause, or was discharged for misconduct connected with his work.

"(d) Each statement of facts submitted under the provisions of subdivision (c)(8) above shall be supported by a statement signed by the person or persons having knowledge of or business records reflecting such facts."

* * *

As pointed up by the above provisions of the code and supplemental regulations a claimant's last employer prior to filing a claim for benefits is entitled to notice of such claim, whether a new or additional claim. It is clear that the Department satisfied its administrative responsibilities in furnishing such initial notice on February 29, 1976. The employer, in keeping with the provisions of the regulations and the statutes, was then obliged to advise the Department of any facts then known which would bear upon the entitlement of the claimant to receive benefits. The employer never denied receipt of the notice. To the contrary, it is the contention of the employer that the failure to respond resulted from the employer's acceptance of the reasons allegedly assigned by the claimant. Such explanation does not constitute good cause for the failure of the employer to satisfy the mandates imposed upon the employer. Having failed to fulfill its obligation to promptly protest the payment of benefits as set forth in the regulations, the employer is not entitled to a ruling or determination.

The purpose of the unemployment compensation program is to provide benefits to those claimants who are involuntarily unemployed within the meaning of the California law. As ameliorative legislation it is essential that a determination of entitlement be rendered as expeditiously as possible to provide continuing funds to claimants who are qualified to receive benefits. It is for such reason that time limitations have been imposed not only on the employer but on the Department as well.

The employer contends that such information was given to the Department prior to the issuance of the determination which originally disqualified the claimant. Under section 1328, supra, the Department has a responsibility

of making a determination irrespective of when such information is received. It does not follow, however, that the belated submission of facts as a result of the Department's investigation satisfies the requirements of the code as to the employer's rights. To hold to the contrary would in effect nullify the statutory scheme set forth by the legislature, an authority which is beyond the jurisdiction of this Board. Accordingly, the employer is not entitled to a determination as to the claimant's eligibility for benefits nor is it entitled to a ruling with respect to its reserve account.

We consider then the rights of the employer to participate in any further actions which may be initiated by the claimant when he filed a claim for extended benefits. The identical provision of the code which authorizes the proper issuance of a determination also specifically provides for the rights of appeal. A benefit appeal is an adversary proceeding between the claimant on the one hand and any other interested party, be it an employer or the Department on the other (Bodinson Manufacturing Company v. California Employment Commission, et al. (1941), 17 Cal. 2d 321, 109 Pac. 2d 935). It was specifically pointed out in the Bodinson case that adversary parties are entitled to participate in further proceedings only if they have satisfied the requirement of the statutes and regulations. Where an employing unit has failed to qualify as such proper party in interest it loses its standing to challenge any administrative or judicial proceeding which may ensue. No additional right in the nature of a new cause of action was envisioned or established by enactment of sections 4000 et seq. of the code. Accordingly, the decision rendered September 1, 1976 became final in the absence of an appeal 20 days following its issuance. Neither the administrative law judge who initially rendered such decision nor any other administrative law judge may thereafter properly reconsider such decision. Not even the Board may belatedly assume jurisdiction over such decision in the absence of a valid appeal by a proper party in interest. It would indeed be anomalous to hold that an employer may revitalize an issue which has become finalized by the mere act of responding to a subsequent notice. To so conclude would grant to the employer powers that neither the administrative law judges nor this Board itself have been accorded.

DECISION

The decision under appeal is affirmed. The employer is not entitled to a determination or ruling with respect to the above claimant. The employer's purported appeal from a decision rendered September 1, 1976 is dismissed.

Sacramento, California, August 2, 1977.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

CARL A. BRITSCHGI

RICHARD H. MARRIOTT

CONCURRING and DISSENTING -
Written Opinion Attached

HARRY K. GRAFE

## CONCURRING AND DISSENTING OPINION

Insofar as my colleagues conclude that the employer is not entitled to a ruling or determination with respect to the claimant's original claim effective February 1, 1976, I concur. However, I must part company with my colleagues when they assert that the employer's timely protest in response to the Department's November 1, 1976 notice of Federal-State Extended Duration Claim does not confer on the employer a right to question the validity of that claim.

As I perceive the matter before us, there are two issues. (1) Does a timely employer protest to an extended duration claim invest in the employer the right to a ruling or determination regarding the claimant's preceding regular unemployment insurance claim? My colleagues answer in the negative, and I agree. (2) Does a timely employer protest to an extended duration claim afford the employer the right to a ruling or determination regarding such extended duration claim? My colleagues again answer in the negative, but I must disagree. Hence, my discussion will relate solely to this second issue.

The entire scheme providing for unemployment compensation in California is statutory, and the governing and controlling provisions are set forth in the Unemployment Insurance Code. Those provisions concerning "Unemployment Compensation" are contained in Part 1, commencing with §100. On the other hand, those provisions relating to "Federal-State Extended Compensation" are contained in Part 4 of the Unemployment Insurance Code, commencing with §4001. Although the majority set forth on page 3 of their decision the provisions of §§4654 and 4655, requiring the Department to give notices to employers of the filing of such claims, to consider the facts submitted by an employer in response to such notice, to make a determination regarding the claimant's eligibility to federal-state extended benefits, and affording the claimant and the employer the right of appeal from an adverse determination, the majority ignore the provisions which the Legislature has carefully written into §4002. Instead, the majority seemingly ascribe no independent meaning or significance to §§4654 and 4655 because said sections "are in effect a reiteration of §§1327 and 1328 of the code" (majority opinion, page 4). Such a conclusion flies in the face of, and is contrary to, the clear and unmistakable intent of the Legislature as is set forth in §4002, which provides as follows:

"(a) Except as otherwise provided, the provisions and definitions of Part 1 (commencing with Section 100) of this division apply to this part. In case of any conflict between the provisions of Part 1 and the provisions of this part, the provisions of this part shall prevail with respect to federal-state extended benefits.

(b) Except as otherwise provided, subdivision (d) of Section 1253, and Sections 1030, 1032, 1254, 1277, 1281, 1327, 1328, 1329, 1330, and 1331 do not apply to this part.

(c) The provisions of Part 2 (commencing with Section 2601) of, and of Part 3 (commencing with Section 3501) of this division do not apply to this part." (Emphasis added)

It is apparent, beyond question, that the Legislature in writing subdivision (b) of §4002 intended the provisions of the Federal-State Extended Benefits Program to be separate and distinct from the general unemployment insurance program insofar as matters of notice by the Department, protests by the employer, determinations by the Department, and appeals therefrom by the claimant or employer are concerned. The Legislature expressly provided that §§1327 and 1328 do not apply to the scheme of federal-state extended benefits. To bolster (if such be needed) that mandate, the Legislature provided in subdivision (a) of §4002 that in the event of conflict between the provisions of any other part of the Unemployment Insurance Code and Part 4, the provisions of Part 4 "shall prevail with respect to federal-state extended benefits."

Even had the Legislature not taken the trouble to clearly state its intent in this regard, under the equitable doctrine: "The law neither does nor requires idle acts" (Civil Code §3532; Erickson v. Boothe (1947), 79 Cal App 2d 266), the same result would be reached. Otherwise, there would be an absence of purpose to the requirement by the Legislature that the Department give notice to the employer of the claimant having filed for such extended benefits and that the employer be allowed to protest same.

Also overlooked by my colleagues are the provisions of §§4701 and 4702 of Part 4, which give the employer the right to a ruling under facts like those in the present matter. Said sections provide:

"4701. (a) Any employer who is entitled under Section 4654 to notice of the filing of an application or additional claim and who, within 10 days after mailing of such notice, submits to the Employment Development Department any facts within its possession disclosing whether the individual left the most recent employment with such employer voluntarily and without good cause or was discharged from such employment for misconduct connected with his work shall be entitled to a ruling as prescribed by this section.

(b) The Employment Development Department shall consider such facts together with any information in its possession and promptly issue to the employer its ruling as to the cause of the termination of the individual's most recent employment. Any ruling may for good cause be reconsidered by the Employment Development Department within 15 days after mailing or personal service of the notice of ruling, except that any ruling which relates to a determination which is reconsidered pursuant to subdivision (a) of Section 1332 may also be reconsidered by the Employment Development Department within the time provided for reconsideration of such determination. An appeal may be taken from a ruling or reconsidered ruling in the manner provided in Section 4655. The Director of Employment Development shall be an interested party to any appeal.

(c) Rulings under this section shall have the effect prescribed by Section 1032."

"4702. Federal-state extended benefits shall not be charged to any employer's account."

As §4002(b) provides that §§1030 and 1032 are not applicable to federal-state extended benefits, the provision of §4701 must, of necessity, control. Thereunder employers like the appellant herein are entitled to rulings regarding the question of such extended benefits if timely information is sent to the Department in response to a notice of claim for such benefits.

Finally, although the Department in the instant case failed to follow the statutory mandates cited above, this Board can take official notice of the fact that other

field offices of the Department do adhere to the code sections set forth herein (see e.g. cases SF-R-6928 and SF-FED-2412). Although §409 of the code authorizes this Board to designate certain of its decisions as "precedents" nothing in the code or in the California Constitution empowers this Board to direct the Department to ignore statutes enacted by the Legislature. Hence, the Department forthwith should issue to the employer herein a determination and ruling, as required by §§4655 and 4701, with respect to the claimant's entitlement to federal-state extended benefits.

HARRY K. GRAFE